

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

JOHN GRIER CONSTRUCTION, INC.

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and John Grier Construction, Inc. to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **ACode@** means the Code of Virginia (1950), as amended.
2. **ABoard@** means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code ' ' 62.1-44.7 and 10.1-1184.
3. **ADEQ@** means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code ' 10.1-1183.
4. **ADirector@** means the Director of the Department of Environmental Quality.
5. **ARegional Office@** means the Tidewater Regional Office of DEQ.
6. **AOrder@** means this document, also known as a consent special order.
7. **AREgulations@** means 9 VAC 25-210-10 *et seq.* - Virginia Water Protection Permit Program Regulation.
8. **"Grier"** means John Grier Construction, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

SECTION C: Findings of Facts and Conclusions of Law

1. John Grier owns lot #1 in the Barrett's Ferry subdivision which is located adjacent to Chickahominy River near the confluence with the James River. The 17.85 acre property contains wetlands.
2. On September 3, 2002, DEQ and Army Corps of Engineers staff inspected the site. It was documented that approximately 0.27 acres of fill had been deposited in a cypress swamp for the construction of an access road leading to the Chickahominy River. The 1,200 foot long road is approximately 10 feet wide and includes eight reinforced concrete culverts (12 inches in diameter) under the roadway to allow for the flow of water. The Army Corp of Engineers (ACOE) confirmed wetland delineation boundaries for the impacted area to be 11,892 square feet of forested wetlands. Most of the road (1,160 feet) is in wetlands. The total amount of fill used in the construction of the road is approximately 3,743 cubic yards.
3. Sections 62.1-44.5 and 62.1-44.15:15 of the Code and Section 25-210-50.A of the Regulations require the issuance of a Virginia Water Protection ("VWP") permit prior to the fill or discharge of pollutants into State waters.
4. DEQ had not issued a VWP permit prior to the construction of the road and fill of the wetlands. DEQ received on September 4, 2002 an after the fact joint permit application (JPA) for the unauthorized activities on the property. The JPA states that the wetlands impacts will be mitigated through the purchase of wetlands credits from an approved mitigation bank. The JPA is under review by DEQ and the ACOE.
5. Notice of Violation No. 02-09-TRO-003 was issued to John Grier on October 1, 2002 in regard to the activities described above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders John Grier, and John Grier agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders John Grier, and John Grier voluntarily agrees to pay a civil charge of \$10,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall include John Grier's Federal Identification Number and shall note that payment is being made as required by this Order. Payment shall be made by check payable to the "Treasurer of Virginia" delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of John Grier, for good cause shown by John Grier, or on its own motion after notice and opportunity to be heard.

2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in any permit issued by the Board.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the site as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, John Grier admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. John Grier consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. John Grier declares it has received fair and due process under the Administrative Process Act, Code ' ' 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
7. Failure by John Grier to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. John Grier shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. John Grier must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. John Grier shall notify the Director or the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within 24 hours of learning of any condition listed above, which John Grier intends to assert will result in the

impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and John Grier. Notwithstanding the foregoing, John Grier agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to John Grier. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve John Grier from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

By its signature below, John Grier voluntarily agrees to the issuance of this Order.

And it is so Ordered this _____ day of _____, 2003.

Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

John Grier Construction Company, Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _ day of

_____, 2003, by Joseph S. Terrell, who is president of John Grier Construction Company, Inc., on behalf of the Corporation.

Notary Public

My commission expires: _____.

APPENDIX A

JOHN GRIER CONSTURCTION COMPANY, INC.

John Grier shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. Upon issuance of a VWP permit, comply with all the provisions of the permit.
3. In the event that the VWP permit is denied, submit within 60 days of receipt of notice of denial, an approvable plan and implementation schedule for restoration of the impacted wetlands.
4. Implement the plan in accordance with the schedule upon its approval by DEQ.